

### **REMARKS**

This Response is in reply to the final Office Action mailed on March 8, 2005. Claims 1, 6-8 and 13-15 have been amended herein. Claim 3 has been cancelled. Claims 1, 2 and 4-15 are pending. No new matter has been added. Entry and consideration of the amendments and following remarks is respectfully requested.

### **Examiner's Interview**

An Examiner's Interview was conducted on June 7, 2005 with Examiner Bob Madsen to which a proposed response was faxed to him on June 6, 2005. Examiner Madsen found the proposed amendments to the claims to be persuasive over the rejections given with the cited references. Examiner Madsen also stated some suggested amendments to the claims to further clarify the invention which were incorporated in this response. The application should now be in condition for allowance.

### **Amendments to Claims 1 and 15**

Claims 1 and 15 have been amended to recite that "the substrate is a continuous web of flexible material attached to a plurality of said outer packages, wherein each of said outer packages encloses said inner wrapper, which contains said food product, and at least one layer of susceptor material; and wherein the food product is corn which is transformed into popcorn." Please note that the limitation has been amended to recite that the "substrate is a continuous web" instead of

“substrate is made up of a continuous web” to clarify the features of the claim. Claims 1, 6-8 and 13-15 have been amended to recite “susceptor” instead of “heat-concentrating.” Claim 14 has been amended to depend from claim 13. Support for the amendments to the claims is described in the specification beginning on page 6, and shown in Fig. 4. No new matter has been added.

**Claim Rejections - 35 USC §102(b)**

Claims 1, 5, 11, 13 and 15 are rejected under 35 U.S.C. §102(b) as being anticipated by Levinson (U.S. 4,390,554) as evidenced by Waddell (U.S. 6,464,104 B1). This rejection is respectfully traversed.

Independent claims 1 and 15 have been amended as stated above. It is Applicant’s contention that amended claims 1 and 15 of the present invention are not anticipated by cited prior art. The Applicant asserts that the claims are now patentable over Levinson as evidenced by Waddell because these feature are not present in Levinson.

By reason of their dependency on independent claim 1, the Applicant asserts that claims 5, 11, and 13 are also patentable over Levinson.

In the present invention, the packaging assembly is used to cook popcorn in microwave ovens without the necessity of manually removing the outer package of plastic material when the packaging is introduced inside the microwave oven, i.e. is used in a vending machine. Contrary to the Applicant’s invention, in conventional vending machines, the user buys the package containing unpopped corn, manually opens and removes the outer package and places it in the microwave oven,

i.e. the user handles the package. The packaging assembly is also designed to contain corn (not frozen food) and devised to retain its outer package until heated which is required to preserve its humidity and organoleptic qualities until its transformation into popcorn. Furthermore, the use of a continuous web as substrate permits control of the bag in any position of the bag inside the vending machine. When the popcorn is formed and the outer package is melted, the melted outer package remains on the continuous web.

Levinson discloses a microwave oven heating package to be used for defrosting and heating "certain" frozen food. The packaging of Levinson can not be used for transforming corn to popcorn in microwave ovens. The heating package of Levinson comprises a perforated plastic film 2, which permits the steam to escape from the packaging. The steam in the present invention is necessary because it permits inflation of the inner wrapper to create the volume necessary for the popcorn, i.e. the pressure of the steam generated by heating the corn inflates the inner wrapper. If the inner wrapper is not permitted to expand, the corn burns and the formation of the popcorn is not possible. Also, the Levinson heating package is not suitable for use in automatic dispensing machines (i.e. vending machines) because it requires the handling of the heating package. Furthermore, Levinson does not teach or suggest a substrate which is a continuous web attached to an outer face of a plurality of outer packages as specifically recited in the claims.

Therefore, the heating package of Levinson cannot be used either to transform corn to popcorn, or in automatic dispensing machines equipped with microwave ovens as in the present invention.

Waddell (US-6464104) discloses a vending system capable of delivering food packets. However, it is clear that the package F of Waddell is very different from the packaging assembly of Applicant's invention and that this vending system and package F is not capable of providing popcorn nor a package in which the substrate is a continuous web. With the vending system of Waddell the user must open all the layers of the package to access the food, which is not necessary to remove the outer package in the present invention, as stated above. In fact, Waddell does not disclose any particular packaging which opens the outer package by melting a portion of it permitting the inner wrapper to be removed from the outer package as specifically recited in the claims. Nor does Waddell teach or suggest a substrate which is a continuous web attached to an outer face of a plurality of outer packages as specifically recited in the claims.

Therefore, the vending system of Waddell cannot be used either to transform corn to popcorn, or in automatic dispensing machines equipped with microwave ovens as in the present invention.

With regard to the "substrate is a continuous web" limitation, Cox does not teach that the substrate is a continuous web. In Cox, the continuous web is used to form the actual container which holds the food product (see Fig. 7 and 8), i.e. forms the packaging assembly. In the present invention, the substrate is not used to form the packaging assembly itself (Fig. 1 and 2). The substrate comprises a continuous web (pages 8- 9 of specification; Fig. 4), which is attached to the outer package of the packaging assembly, and is used for storing and loading the food products in automatic dispensing machines.

Therefore, the Cox continuous web is not attached to an outer face of the outer package as specifically recited in the claims.

A claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. Levinson, as evidenced by Waddell, does not teach the elements recited in the present claims. Accordingly, Levinson does not anticipate the present invention as recited in independent amended claims 1 and 15. By reason of their dependency on independent claim 1, the Applicant asserts that claims 5, 11, and 13 are also patentable over Levinson. Therefore, it is respectfully requested that the anticipation rejections be withdrawn.

**Claim Rejections - 35 USC §103(a)**

Claim 3 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable Levinson (U.S. 4,390,554) as applied to claims 1, 5, 11, 13, and 15 in view of Cox (U.S. 5,679,278). Claim 8 is rejected under 35 U.S.C. §103(a) as being unpatentable Levinson (U.S. 4,390,554) as applied to claims 1, 5, 11, 13, and 15 in view of Smart et al. (U.S. 4,890,439). Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable Levinson (U.S. 4,390,554) as applied to claims 1, 5, 11, 13, and 15 in view of Borek (U.S. 4,219,573). Claims 2, 7 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable Levinson (U.S. 4,390,554) as applied to claims 1, 5, and 13 in view of Borek (U.S. 4,219,573). Claims 1, 4-6, 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Engstrom et al. (U.S. 4,734,288) in view of Anderson (U.S. 4,950,859). These rejections are respectfully traversed.

As stated above, independent amended claims 1 and 15 are patentable because the limitations are not present in the cited references. Also, by reason of their dependency on independent claim 1, the Applicant asserts that claims 2, and 4-14 are also patentable over the cited prior art. Claim 3 has been canceled, therefore the rejection is moot.

As stated above, Cox does not teach that the substrate is a continuous web which is attached to the outer package of the packaging assembly, and is used for storing and loading the food products in automatic dispensing machines. In Cox, the continuous web is used to form the actual container which holds the food product (see Fig. 7 and 8), i.e. forms the packaging. In the present invention, the substrate which is a continuous web permits control of the position of the outer package (i.e. bag) inside the automatic dispensing machine. When the popcorn is formed and the outer package is melted, the melted outer package remains stuck to the continuous web. Therefore, the Cox continuous web is not a substrate attached to an outer face of the outer package as specifically recited in the claims.

With regard to Engstrom, the reference does not teach or disclose an outer package which is melted during its heating. Since the reference does not teach this limitation, the microwave popcorn package can not be used in automatic dispensing machines, as specifically recited in amended claim 1.

With regard to Anderson, the reference does not teach or suggest a heat-concentrating material 22 which melts any portion of the microwave food package. The heat-concentrating material is used to increase the cooking efficiency.

Applicants submit that there is absolutely no teaching or suggestion that would lead one to combine the teachings of the cited references. None of the references teach or suggest a packaging assembly used in automatic dispensing machines equipped with microwave ovens as in the present invention as specifically recited in the claims. Accordingly, absent some motivation, one of ordinary skill in the art would not combine the inventions of cited references. Furthermore, Applicants submit that even if the references were combined, the result would not be the present invention.

Accordingly, Applicant asserts that claims 1, 2, and 4-14 are patentable over the cited prior for the reasons stated above. It is therefore respectfully requested that the rejection of the claims under 35 U.S.C. §103(a) be withdrawn.


**Conclusion**

In view of the amendments to the claims 1, 6-8 and 13-15 made herein and the arguments presented above, it is submitted that the Examiner's rejections have been overcome and should be withdrawn. The application should now be in condition for allowance.

Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

This Response is being timely filed. In the event that any other extensions and/or fees are required for the entry of this Amendment, the Patent and Trademark Office is specifically authorized to charge such fee to Deposit Account No. 50-0518 in the name of Steinberg & Raskin, P.C. An early and favorable action on the merits is earnestly solicited. An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,  
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